

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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JERRY VANDIVER,

Plaintiff,

v.

Case No. 1:06-CV-547

CORRECTIONAL MEDICAL  
SERVICES, INC., *et al.*,

HON. GORDON J. QUIST

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court has before it Plaintiff's objections to the report and recommendation dated May 21, 2007, in which Magistrate Judge Brenneman recommended that Plaintiff's motion for temporary restraining order be denied. The magistrate judge noted that Plaintiff alleged that he had been transferred from the Gus Harrison Correctional Facility in Adrian, Michigan, to the Saginaw Correctional Facility in Freeland, Michigan, and that the Saginaw facility did not provide him with an adequate diabetic diet. The magistrate judge further noted that Plaintiff apparently requested a transfer back to the Gus Harrison facility as relief in his motion for temporary restraining order. The magistrate judge concluded that Plaintiff's request for a temporary restraining order was moot because the record established that Plaintiff had been transferred back to the Gus Harrison facility, where he would receive an adequate diabetic diet. After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

In his objections, Plaintiff does not contest the fact that he is currently housed at the Gus Harrison facility where he is receiving an adequate diet, nor does he argue that his request to be transferred back to the Gus Harrison facility is not moot. Rather, he asserts that he was subjected

to pain and suffering as a result of the temporary relocation to the Saginaw facility and should be granted a trial in order to present his proofs on this issue. He also contends that the case should not be dismissed, as the magistrate judge suggested in his report and recommendation.

It appears that Plaintiff misapprehends the nature of the magistrate judge's conclusion. The magistrate judge did not recommend that Plaintiff's case be dismissed or that Plaintiff not be granted a trial. The magistrate judge merely concluded, correctly so, that Plaintiff's request for injunctive relief is moot because he is now housed at the Gus Harrison facility where he is receiving an adequate diet. Although whether Plaintiff is entitled to a trial is an issue that has not yet been decided in this case, the report and recommendation suggests no such result at this stage. Therefore,

**IT IS HEREBY ORDERED** that the Magistrate Judge's Report and Recommendation issued May 21, 2007 (docket no. 62) is **APPROVED AND ADOPTED** as the Opinion of this Court.

**IT IS FURTHER ORDERED** that Plaintiff's Emergency Motion For Temporary Restraining Order (docket no. 54) is **DENIED**.

Dated: June 28, 2007

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE